

PS8
(8/88)

United States District Court
for the
Eastern District of Michigan

U.S.A. vs. **Frank Cunningham**

Docket No. 2:22-30248-1

Petition for Action on Conditions of Pretrial Release

COMES NOW Christen Rudd, Pretrial Services Officer, presenting an official report on defendant Frank Cunningham, who was placed under pretrial release supervision on a \$10,000.00 unsecured bond by United States Magistrate Judge Jonathan J.C. Grey, sitting in the court at the Eastern District of Michigan, on May 27, 2022, under the following conditions:

1. Report as directed to Pretrial Services Agency
2. Travel restricted to the Eastern District of Michigan and Western District of Pennsylvania (court purposes only)
3. Obtain medical or mental health treatment as directed by the supervising officer and provide a co-payment for treatment as directed
4. Do not possess a firearm, destructive device, or other dangerous weapon
5. Do not use or unlawfully possess a narcotic drug or other controlled substance, unless prescribed by a licensed medical practitioner
6. Submit to substance abuse testing/treatment as directed by Pretrial Services
7. Appear in the Western District of Pennsylvania as directed

This case emanates from the Western District of Pennsylvania (WDPA). However, the defendant has not made his initial appearance in WDPA. On May 31, 2022, Your Honor signed a stipulated order to stay the Government's Petition for Transfer of Defendant to Another District for 30 days. On June 27, 2022, Your Honor signed a stipulated order to stay the Government's Petition for Transfer of Defendant to Another District for an additional 30 days. On July 26, 2022, United States Magistrate Judge David R. Grand signed a stipulated order to stay the Government's Petition for Transfer of Defendant to Another District for 60 days.

Respectfully presenting petition for action of court and for cause as follows:

Since his release on bond four months ago, Pretrial Services has submitted a total of five violation memorandums to Your Honor advising of the defendant's non-compliance. In summary, the defendant has tested positive for cocaine six times (May 27, 2022; June 14 and 29, 2022; and July 8, 22, and 29, 2022). It should be noted the sample collected on May 27, 2022, also confirmed positive for marijuana. Further, the defendant failed to report for drug testing as directed on July 7, 21, and 26, 2022, and September 8, 2022. The drug tests submitted on June 14, 2022; July 22, 2022; and August 31, 2022, were dilute. Since the most recent violation memorandum submitted to Your Honor on August 9, 2022, the defendant has continued to struggle with compliance.

On July 19, 2022, the defendant completed his intake for outpatient substance abuse treatment at Sobriety House. He was enrolled in individual therapy and recovery support groups two times per week. The defendant was also required to report for drug testing every two weeks. The defendant had tested positive for COVID-19 on August 10, 2022, causing a lapse in treatment and testing up to August 19, 2022, when he tested negative for COVID-19. On September 2, 2022, the defendant's substance abuse therapist advised the defendant had not complied with his treatment plan since testing negative for COVID-19. The therapist attempted to reach the defendant twice without success. Further, the defendant was referred to mental health services by his case manager at Sobriety House, and the defendant also failed to follow up with those services.

On September 2, 2022, the defendant was admonished for his failure to attend outpatient drug treatment as directed. Pretrial Services advised the defendant he would be required to attend residential drug treatment given he continues to test positive for cocaine and he has not attended outpatient drug treatment as directed. The defendant was directed to resume outpatient drug treatment immediately, and to search for residential drug treatment programs in the meantime.

The defendant failed to report for drug testing on September 8, 2022. He was admonished for his failure to appear for drug testing; the defendant indicated he did not hear his number called on the Code O Phone drug test line.

On September 21, 2022, the defendant submitted a presumptive positive cocaine test. The defendant denied recent use of cocaine. The defendant admitted he stopped attending outpatient treatment at Sobriety House because the therapist was "unprofessional" and had demanded the defendant to report on short notice to the treatment program. The defendant was admonished and directed to resume outpatient drug treatment and seek residential drug treatment. Confirmation results for the September 21, 2022, test is still pending.

On September 23, 2022, the defendant's substance abuse therapist stated the defendant has not attended outpatient drug treatment since August 23, 2022. Further, the defendant tested positive for fentanyl, cocaine, and alcohol at Sobriety House on July 19, 2022. Further, the therapist and case manager have attempted to reach the defendant for the past month without success. The therapist recommended the defendant participate in residential drug treatment.

On September 23, 2022, the defendant was again admonished for his failure to attend outpatient drug treatment. Pretrial Services directed the defendant to call Detroit Wayne Integrated Health Network (DWIHN) that same date and request a referral for residential drug treatment. Pretrial Services directed the defendant to contact Pretrial Services immediately after. The defendant failed to contact DWIHN as directed.

On September 26, 2022, the defendant tested negative for all substances. The defendant advised Pretrial Services that he did not call DWIHN as directed because he has not used cocaine and the defendant has been testing positive for cocaine over the past few months due to touching and inhaling the substance. The defendant stated he has a friend that pays him money to assist in mixing and handling cocaine. He explained that his friend uses a blender to mix cocaine, and that the defendant thought he would test negative with Pretrial Services if he used gloves and a mask while handling the substance. The defendant reported he recently told his friend that he cannot continue

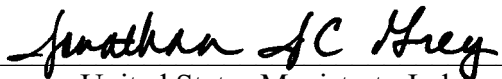
to help him, as he continues to test positive for cocaine. The defendant stated he would rather go into custody than attend residential drug treatment, as treatment would not help him since he is not using any illicit substances.

Due to the defendant's ongoing non-compliance, Pretrial Services respectfully recommends the defendant appear before Your Honor to address the above-noted violations and show cause why his bond should not be revoked. Pretrial Services and the substance abuse treatment provider has exhausted all efforts in getting the defendant to attend residential drug treatment. The defendant indicated he is not amenable to residential drug treatment and admitted to Pretrial Services that he is dealing and/or assisting others in dealing controlled substances.

There are currently no future court dates set in the Eastern District of Michigan or the Western District of Pennsylvania.

On September 26, 2022, Pretrial Services notified defense counsel, David C. Tholen, and Assistant U.S. Attorney Regina R. McCullough of the request for a hearing below.

PRAYING THAT THE COURT WILL ORDER A BOND REVIEW HEARING BE HELD ON 10/4/2022 AT 10:00 A.M. SO THAT THE DEFENDANT MAY ANSWER TO THE ABOVE-NOTED ALLEGATIONS.

<p style="text-align: center;">ORDER OF COURT</p> <p>Considered and ordered this <u>27th</u> day of <u>September</u>, 20 <u>22</u> and ordered filed and made a part of the records in the above case.</p> <p> United States Magistrate Judge Jonathan J.C. Grey</p>	<p>I declare under penalty of perjury that the foregoing is true and correct.</p> <p>Executed on September 26, 2022</p> <p style="text-align: center;">s/Christen Rudd U.S. Pretrial Services Officer</p> <p>Place: Detroit, Michigan Date: September 26, 2022</p>
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